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Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

DENISE R. GRAMME,

Plaintiff and Respondent,

vs.

Case No. 15420

ANDRE GRAMME,

Defendant and Appellant.

APPELLANT'S BRIEF IN ANSWER TO RESPONDENT'S
PETITION FOR REHEARING

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TABLE OF CONTENTS

	Page
APPELLANT'S BRIEF IN ANSWER TO RESPONDENT'S PETITION FOR REHEARING.	1
STATEMENT OF FACTS	2
ARGUMENT	2
POINT I THE COURT HEARD AND CONSIDERED THE PLAINTIFF'S CLAIM AT THE TIME OF THE APPEAL AND COMMITTED NO ERROR IN FAILING TO AWARD ADDITIONAL FEES	2
CONCLUSION	4

CASES CITED

<u>Allredge v. Allredge</u> 119 Utah 504, 229 P.2d 681	3
<u>Callister v. Callister</u> 1 Utah 2d 34, 261 P.2d 944	4

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APPELLANT'S BRIEF IN ANSWER TO RESPONDENT'S

PETITION FOR REHEARING

The Defendant-Appellant requests that the Court deny Respondent's Petition for Rehearing for the following reasons:

1. The Respondent did not cross-appeal for attorney's fees and costs.
2. The Court did not legally err in failing to make such an award.
3. The wife had substantial separate estate with which to pay such costs and fees.

Respectfully submitted,

JOEL M. ALLRED
Attorney for Defendant and Appellant

STATEMENT OF FACTS

The Trial Court entered Judgment against Defendant-Appellant on August 24, 1977. It awarded the Respondent in excess of \$200,000.00 in real and personal property, \$8,300.00 in court costs and attorneys fees and alimony of \$1,400.00 per month. This Court affirmed those awards on November 14, 1978, but did not award the Respondent additional fees for her counsel as requested in Point 4 of the Respondent's Brief, and again in its conclusion.

ARGUMENT

POINT I

THE COURT HEARD AND CONSIDERED THE PLAINTIFF'S CLAIM AT THE TIME OF THE APPEAL AND COMMITTED NO ERROR IN FAILING TO AWARD ADDITIONAL FEES.

The Respondent did not cross-appeal for attorneys fees and costs. The claim that the Respondent was entitled to such an award in addition to the substantial division of the estate made by the Trial Court and just affirmed, was prominently featured in the Respondent's Brief. It is unlikely that this Court failed to consider the Plaintiff's claim when the Brief's concluding words requested precisely such relief. By failing to grant the relief as prayed, the Court addressed the issue of attorneys fees on appeal. It

is not legal error to fail to make such an award. The petition for Rehearing fails to show that the Appellate Court erred.

The financial circumstances of the parties have an important bearing on issues relative to attorneys fees and suit money, and are critical to the determination of the amount of, or the necessity for, their award.

"The reason for permitting a wife suit money to defend an action for divorce rests on the ground that the wife normally has no separate estate from which to pay for bringing or defending the action. This is the situation in the case at hand."
Allredge v. Allredge 119 Utah 504, 229 P.2d 681. (Emphasis supplied.)

The financial facts were before the Court at the time it made its ruling on appeal. The Trial Court awarded the Respondent real and personal property valued in excess of \$200,000.00. It also assessed attorneys fees and costs in excess of \$8,300.00 which were previously paid by the Appellant. The Court awarded alimony of \$1,400.00 per month, which over the Defendant-Appellant's work life expectancy will amount to \$252,000.00. The dollar value of the award to the Respondent, which this Court affirmed, is, or will be, in the vicinity of one-half million dollars.

The circumstances of the wife were not such that she needed be given, in the sound discretion of this Court,

additional financial assistance in support of this litigation. The evidence before the Court at the time of the Hearing on appeal demonstrated that the Plaintiff had sufficient income from property owned by her to justify the Court's ruling that the Defendant should not be required to pay her attorneys fees and costs in these proceedings. Callister v. Callister 1 Utah 2d 34, 261 P.2d 944.

CONCLUSION

It is not equitable that the Defendant should bear these costs from his share of the marital estate. This Court was faced with the Respondent's claim for fees on appeal. It must be presumed that the issue was considered when the Court made its ruling. There is no legal error in the denial of such charges. The ruling should not be reconsidered.

Respectfully submitted,

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Salt Lake City, Utah 84111

Attorney for Defendant-
Appellant

CERTIFICATE OF SERVICE

I hereby certify I served three (3) copies of the foregoing Appellant's Brief in Answer to Respondent's Petition for Rehearing, by mailing the same, postage prepaid, to Mr. Mark C. McLachlan, Attorney for Plaintiff and Respondent, 343 South 400 East, Salt Lake City, Utah, 84111, and Mr. Ralph J. Hafen, Attorney for Plaintiff and Respondent, 924 Kearns Building, Salt Lake City, Utah, 84101, this day of December, 1978.
